

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 13, 2014 at 1:30 p.m.

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1. [10-27399-E-13](#) DAN GOODLOW MOTION BY PETER G. MACALUSO TO
[12-2195](#) Peter G. Macaluso WITHDRAW AS ATTORNEY
PGM-1 2-4-14 [77]
GOODLOW V. MARTIN ET AL

Tentative Ruling: The Motion to Withdraw as Attorney has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 1007(b)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all parties to the adversary proceedings, and Office of the United States Trustee on February 4, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The court's tentative decision is to grant the Motion to Withdraw as Attorney. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Peter G. Macaluso, attorney of record for Plaintiff Dan Goodlaw, filed a Motion to Withdraw as Attorney in this adversary proceeding, Mr. Macaluso does not seek, in this motion, to withdraw as Debtor's counsel in the bankruptcy case. Movant states the following reasons for the motion: (1) lack of cooperation, communication, and response from the Plaintiff-Client to prosecute the case, (2) disagreement between Movant and Plaintiff on how to proceed with the case. Movant does not reveal any specific facts because he is bound by the attorney-client privilege.

RELEVANT LEGAL AUTHORITY

District Court Rule 182(d) governs the withdrawal of counsel. Local

Bankr. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. Cal. L.R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 21 Cal. App. 4th 904 (Cal. App. 1st Dist. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 915.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. Cal. L.R. 180(e).

The termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. Cal. R. Prof'l. Conduct 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person, (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act, and (3) has a mental or physical condition which makes Counsel's continued employment unreasonably difficult. Cal. R. Prof'l. Conduct 3-700(B).

Permissive Withdrawal is limited to when to situations where:

(1) Client:

(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good

faith argument for an extension, modification, or reversal of existing law, or

(b) seeks to pursue an illegal course of conduct, or

(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or

(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Cal. R. Prof'l. Conduct 3-700(C).

DISCUSSION

Movant filed and noticed a motion to the Plaintiff. Movant provided the following address for the Plaintiff: 1013 Hickory Ave., Fairfield, California in the Motion, not in the declaration.

Movant provides various reasons for his Motion to Withdraw as Attorney such as his inability to work and communicate with Defendant for over five months to move the case forward. Additionally, Movant and Defendant are in disagreement over how to proceed forward with the case.

Movant does not discuss any prejudice his withdrawal as a counsel will or will not cause to the other litigants or harm it might or might not have on administration justice. However, neither the Trustee, Debtor or any other relevant party has filed an opposition to this Local Bankruptcy Rule 9014-1(f) (1) motion.

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Furthermore, under the California Rules of Professional Conduct 3-700(C) (1) (d), Plaintiff's conduct, such as the lack of response to correspondence from the Movant as well as inability to agree with the Movant on how to proceed forward with the case, is hindering Movant's ability to carry out his employment and duties effectively. These are sufficient reasons for permissive withdrawal.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Withdraw as Attorney filed by Debtor's Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is granted.